Supreme Court, U.S.
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No. _____

TX Sup. Ct. No. 09-0631
COA No. 09-07-00566-CV/
COA No. 09-06-00099-CV

In The

Supreme Court Of The United States

ELIJAH WHITE RATCLIFF,
Petitioner

v.

LHR, INC.,
Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS FOR THE NINTH
DISTRICT OF TEXAS

PETITION FOR WRIT OF CERTIORARI

Elijah W. Ratcliff *
P.O. Box 862
Livingston, Texas 77351
(903) 948-3089

* *Petitioner*

QUESTIONS PRESENTED

I. WHETHER DUE PROCESS ENTITLED CROSS PLAINTIFF WAS ENTITLED TO AN ORDER DIRECTING CROSS DEFENDANT TO VERIFY OR WITHDRAW ITS RESPONSE TO RULE 197 INTERROGATORIES TO DEFENDANT SERVED AS REQUIRED BY RULE 197(d).

II WHETHER DUE PROCESS ENTITLED CROSS PLAINTIFF TO AN ORDER DIRECTING CROSS DEFENDANT TO DOCUMENT AND VERIFY ITS RESPONSE TO RULE 194.1 REQUEST FOR DISCLOSURES AS REQUIRED BY RULES 193.4 AND 194.4 WHERE THE REQUEST SPECIFIES AN ENTITY WHOSE MISCONDUCT COMPRISED A FRAUDULENT ACT CREATING A DEFECT IN THE INSTRUMENT RELIED UPON BY PLAINTIFF, CROSS DEFENDANT, WHICH FACTOR WAS KNOWN TO SUCH SUITOR.

III. WHETHER DEFENDANT, CROSS PLAINTIFF, WAS ENTITLED TO OBJECT THAT PLAINTIFF, CROSS DEFENDANT, HAD NOT SUFFICIENTLY IDENTIFIED THE PARTY IT SOUGHT TO SUE WHERE TWO OR MORE PERSONS WITH SIMILAR NAMES WERE INVOLVED IN CONTEMPORANEOUS LITIGATION AS FIDUCIARIES OR PRINCIPALS OF DEFENDANT, AND VERIFICATION OF IDENTITY FOR THE PARTY INTENDED

QUESTIONS PRESENTED

TO BE SUED SHOULD HAVE BEEN ROUTINE TO ACCOMPLISH.

IV. WHETHER DEFENDANT, CROSS PLAINTIFF, WAS ENTITLED TO PROPER IDENTIFICATION OF THE PARTY PLAINTIFF SOUGHT TO SUE BEFORE ATTEMPTING AN INHERENTLY SPECULATIVE RESPONSE PURPORTING TO SPECIFICALLY REFERENCE EVERY PERSON WITH KNOWLEDGE OF RELEVANT FACTS.

V. WHETHER DEFENDANT, CROSS PLAINTIFF, WAS ENTITLED TO PROPER IDENTIFICATION OF THE INTENDED DEFENDANT AND THE ACQUISITION SOURCE FOR ANY TITLE CLAIMED BY PLAINTIFF, CROSS DEFENDANT, PRELIMINARY TO ASSESSING AND DETERMINING HIS EXPERT WITNESSES.

VI. WHETHER IT IS PRESUMPTUOUS AND OBJECTIONABLE UNDER APPLICABLE RULES OF COURT FOR DEFENDANT, CROSS PLAINTIFF, TO BE COMPELLED TO CHARACTERIZE A DOCUMENT AS A CONTRACT WHERE SUCH PARTY HAS NOT DETERMINED THE INSTRUMENT TO POSSESS SUCH STATUS, AND THAT FACTOR IS A CONTROLLING ISSUE IN THE CASE.

QUESTIONS PRESENTED

VII. WHETHER A DEFENDANT MAY PROPERLY OBJECT TO IRRELEVANT INTERROGATORIES AND REQUEST FOR DISCLOSURES WHICH PRESENT NO CORRELATION TO ANY ISSUE WHICH COULD ARISE IN THE PROCEEDING.

VIII. WHETHER A DEFENDANT, CROSS PLAINTIFF, IS ENTITLED TO SANCTIONS AGAINST HIS ADVERSARY ARISING OUT OF SUCH ADVERSARY'S ARBITRARY, UNREASONABLE AND CAPRICIOUS ABUSE OF DISCOVERY AS WELL AS ITS DUTIES AS A LITIGANT UNDER THE RULES OF PLEADING.

IX. WHETHER THE REFUSAL TO PROVIDE TIMELY VERIFIED RESPONSES TO A REQUEST FOR DISCLOSURES AND INTERROGATORIES ATTACHED TO A MALICIOUS PROSECUTION ENGAGED BY THE NON-RESPONDING PLAINTIFF ENTITLED THE REQUESTING DEFENDANT, CROSS PLAINTIFF, TO JUDICIAL RELIEF AS A MATTER OF DUE PROCESS AND EQUAL PROTECTION INVOKING THE INHERENT POWERS OF THE APPELLATE COURTS.

X. WHETHER A DEFENDANT, CROSS PLAINTIFF, IS ENTITLED TO SUMMARY JUDGMENT AND SANCTIONS ARISING OUT OF THE CROSS

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XI. **XI. THE PREJUDICIAL FACTOR ENCOUNTERED BY PETITIONER ARISING OUT OF HIS WRONGFUL CRIMINAL PROSECUTION, TX Ct. Cr. Ap. NO. PD-0215-09, SHOULD BE RECTIFIED HEREIN BY FURTHER WRIT OF CERTIORARI.**

IDENTITY OF PARTIES

Interested parties to the immediate proceeding as adjudicated from the District Court of Polk County, Texas, 258th Judicial District, No. 22,975, are as follows:

Appellant: Elijah W. Ratcliff
P. O. Box 862
Livingston, Texas 77351
Ph. 903 948-3089

Appellee: LHR, Inc.
A Corporation organized under the laws of the State of New York,
Represented by:

Hull & Associates P.C.
Hon. Brian Staley, Attorney
6200 Savoy, Suite 440
Houston, Texas 77036
Ph. 713 952-1700
Fax 713 952-8375

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No. _____

TX Sup. Ct. NO. 09-0631

COA No. 09-07-00566-CV/

COA No. 09-06-00099-CV

IN THE SUPREME COURT

OF THE UNITED STATES

ELIJAH WHITE RATCLIFF,

PETITIONER

VS

LHR, INC.,

RESPONDENT,

PETITION FOR WRIT OF CERTIORARI

Petitioner, Elijah White Ratcliff, respectfully, prays that the Writ of Certiorari issue, in conjunction with necessary orders, comprising an effective Writ of Certiorari to the Court of Appeals, Ninth District of Texas, COA No. 09-07-00566-CV/COA No. 09-06-00099-CV, and, ultimately, reversing the Judgment, orders, fiats and Opinions of the State courts.

OPINIONS BELOW

The Memorandum Opinion of the Court of Appeals affirming the trial Court was issued on the 28th day of May, 2009 (Appendix pp A-2 - A-15), with respect to

which Petitioner filed a Motion for Rehearing on the 26th day of June, 2009, overruled by the Court of Appeals panel on he 2nd day of July, 2009, and a Motion for extension of time to file a Petition for Discretionary Review was granted on the 6th day of August, 2009, which Petition for Discretionary Review was refused on October 9, 2009 (Appendix p. A-1).

JURISDICTION

Jurisdiction of the Supreme Court of the United States in this Petition is invoked pursuant to Title 28, United States Code, Sections 1257(a), 1446(c)(3), 1447(d), 1651, 1652 and 2101©. *State of Georgia v Rachel*, 86 S.Ct. 1783 (1966), 384 U.S. 790.

Jurisdiction of the Supreme Court of Texas was invoked herein pursuant to **V.T.C.A. Government Code Sections. 22.001 and 22.002.** Jurisdiction of the Court of Appeals for Ninth District of Texas was timely invoked pursuant to **Vernon's Ann. Tex. Const., Art V, Section 6, and, ultimately, United States Code, Const. Amend. XIV, and V.T.C.A. Government Code, §§. 22.001, 22.220 and 22.221. The trial Court's jurisdiction was invoked pursuant to Vernon's Ann. Tex. Const., Art V, Section 8, and, ultimately, United States Code, Const. Amend. XIV, and V.T.C.A. Government Code, §§. 24.007 and 24.008.**

Following the State trial Court's fabrication of a conviction: No. 18,176, November 15, 2005, and revocation of probation: No. 18,176, September 11, 2007, Petitioner filed a timely Notice of Appeal and State court Petition for Writ of Mandamus (Ratcliff v Texas, No. 09-558, U.S. Sup. Ct., Appendix D, Entries of 10/28/2005 and 11/07/2005, p. A-8), but the State Appellate courts have refused to address the issues and the relief to which Petitioner is entitled, or require the District Clerk or Court Reporter to provide the plenary Appellate Record, even though it was properly requested by Petitioner, which would show Petitioner's absolute innocence to the subject criminal charges against him.

In the context of the Texas Appellate Courts' failure to honor jurusdictional duties, without a meritorious explanation, a copy of the Petition, with Appendix, was served on the Solicitor General of the United States and the State Prosecuting Attorney addressed, and further copies will be served upon the immediate Respondent upon an indication, formal or informal, from such party or this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional provisions involved as a basis for this Petition for Writ of Certiorari include **United States Code, Cons. Art. III, and**

Amends. I, V, and XIV. Statutory authorities involved are **Title 28, United States Code, Sections 1343, 1443, 1446(c)(3), 1447(d), 1651 and 1652.** Also, invoked are **Title 42, United States Code, Sections 1981, 1982, 1985 and 1988.** The referenced restraints upon Petitioner's liberty limited copying and verbatim textual recitations under **U.S. Sup. Ct. Rules, rule 14.1(f), 28 U.S.C.A.**, or the furnishing of such items for a more exhaustive Appendix below.

Specimen State statutory authorities disregarded by the Texas appellate courts pertinent to their jurisdiction and duties are **V.T.C.A. Government Code §§ 22.001, 22.002, 22.220 and 22.221**. Applicable statutes and rules prescribing limits and boundaries for the District Court of Polk County, Texas, No. 22,975, which such District Court abused and disregarded, and which the appellate courts have refrained from rectifying include **V.T.C.A. Civil Practice & Remedies §§ 16.002(a)(3) and 16.004(a)** (Appendix p. 50) and **Fed. Rules Civ. Proc. rule 4(c)(2), 28 U.S.C.A.; Vernon's Ann. Rules Civ. Proc., rules 99, 103, 105, 106(a), 107, 166a(a), 193,194, 197, 198 and 215 and 239.**

STATEMENT OF THE CASE

The immediate proceeding arises out of the trial Court's abuse of discretion in refusing to grant summary judgment for damages or a discovery Order, including sanctions, in behalf of Petitioner, who is the Defendant and Cross Plaintiff in a malicious prosecution and abuse of the legal process

engaged by Respondent, Plaintiff and Cross Defendant in the trial Court (Appendix pp A-16; A-27, item 8; A-29; A-45).

Respondent, Plaintiff and Cross Defendant, is a national accumulator of defective contracts, who acquired one such void instrument naming Bank One, N.A., as creditor, and filed suit, serving Petitioner, Defendant and Cross Plaintiff, with legal process at Livingston, Polk County, Texas, No. 22,975, 258th Judicial District., seeking to establish liability under the instrument which showed on its face that limitations had run on the alleged debt (Clerk's Record Vol. I, pp 02-14). Petitioner filed in the trial Court and the United States District Court a Petition for Removal asserting Civil Rights, and, ultimately, diversity jurisdiction (Clerk's Record Vol. I, pp 15 – 33), supplemented by a Cross Action setting forth facts, including the amount in controversy, within the jurisdiction of the State trial Court as well as the United States District Court.

The Clerk of the State District Court issued a Citation, and it was served on Respondent ,with the cross action and related documents attached., by a duly qualified process server as reflected by the Return of Service filed in the State trial Court (Clerk's Record Vol. I, pp 47-48).

Following expiration of the prescribed period within which Respondent was required to appear or file answer, Petitioner filed his Affidavit for Judgment by Default with the State District Clerk on September 11, 2006 (Clerk's Record, Vol. I, pp 72-76).

Plaintiff's Original Petition, Request for Disclo-

sures and Request for Admissions initiated the discovery process(Clerk's Record, Vol, I, pp 02-14), and Petitioner timely and expeditiously filed and served verified responses to the nebulous and speculative inquiries, including each basis for his objections thereto (Clerk's Record, Vol. I, pp 49-65: August 24, 2006). On December 9, 2006, Petitioner commenced his discovery with a Request for Disclosures , pursuant to **Vernon's Ann. Rules Civ. Proc., rule194**,via Fax and the United States Postal Service, and Interrog-atories to Cross Defendant pursuant to **Vernon's Ann. Rules Civ. Proc., rule 197**, similarly, via Fax and the United States Postal Service (Clerk's Record, Vol. I, pp 146-161: Attachments; also, Appendix pp A-29 - A-38).

Petitioner, with an affidavit geared to his status as a 1962 graduate of the School of Law at Texas Southern University who successfully negotiated the June 1962 Texas State Bar Examination preliminary to admission to practice law in the Courts of Texas in September of 1962, which status remains in deference to **United States Code, Const. Amend. XIV**, sought Summary Judgment and, alternatively, sanctions against Respondent arising from multiple dilatory tactics, contravening the Rules of Court, via a Motion timely set for hearing and served on Respondent on the 28th day of September, 2006, as filed with the District Clerk (Clerk's Record, Vol. I, pp 78-100). **Vernon's Ann. Rules Evid. Rules 702 and 704**. *Rio Grande Valley Gas Co. v City of Edinburg*, 59 S.W.3d 199 (13trh Dist. 2000), on rehearing in part, 59 S.W.3d 225, review granted,

affirmed, affirmed in part, reversed in part 2003 WL 22495756, Petition for rehearing filed. Respondent filed a counter Motion for a discovery Order without filing timely verified responses to Defendant, Cross Plaintiff's, Rule 194 Request for Disclosures , or timely answers to Plaintiff's Interrogatories (Clerk's Record, Vol. I, pp 101-104).

On the 30th day of January, 2007, the State trial Court Presiding Judge rendered an Order granting sanctions as requested by Respondent against Petitioner while declining to grant the Default Judgment, Summary Judgment or Order for Sanctions as Petitioner's motions duly requested (Clerk's Record, Vol. I, pp 141, 165-166, 173, 177), and Petitioner sought to invoke jurisdiction of the Court of Appeals, Ninth District of Texas (No. 09-06-00099-CV: 02/08/2007; also, See Response to Appellate Court's ; Letter of March 1, 2007: March 10, 2007, p. 1, ¶ 1, p. 4, ¶¶ 3, 4; Clerk's Record, Vol. I, pp 288-290). The Court of Appeals' Opinion of March 22, 2007, declined to exercise jurisdiction and returned proceedings to the trial Court. On the 23rd day of May, 2007, in the context of the appellate mandate, Petitioner provided supplemental Answers to Interrogatories while expressly reserving his rights under Constitutional provisions, statutes and rules vesting in Defendant, Cross Plaintiff, invoked by Respondent's abusive tactics (Clerk's Record, Vol. I, pp 279-287).

The parties renewed their motions for sanctions and for summary judgment, in addition to Cross Plaintiff's request, alternatively, for a discovery

compelling Order (Clerk's Record, Vol. I, pp 210-231; also, Appendix, I*bid.*).

The Presiding Judge, biased by her previous rulings, granted summary Judgment for Respondent in a notorious abuse of discretion while denying all relief to Petitioner at a hearing held on the 30th day of October, 2007, without notice to Petitioner (Appendix p. A-16; Reporter's Record: October 30,2009, p. 9) after refusing to properly proceed with Petitioner's motions duly set with an appearance by Petitioner on the 2nd day of October, 2007 (Appendix p. A-16; Reporter's Record: October 2,2009: fraudulently aborted). Thus, Petitioner supplemented his Notice of Appeal (Clerk's Record, Vol. I, pp 288-290, 291-302).

It is factually controlling, further, that Respondent's pleadings, through the note attached thereto, as well as the initial pleading of Petitioner, with such Respondent's pleadings attached to the Petition for Removal, reflect on the face of each pleading that Respondent's claim is barred by limitations under **V.T.C.A. Civil Practice & Remedies § 16.04(a)(3)**, and well established precedents such as *Diversified Finance Systems, Inc. v Hill, Heard, O'Neal, Gilstrap &Goetz, P.C.*, 99 S.W.3d 349 (2nd Dist. 2003), on remand 2004 WL 5158054, justifying assertion granting of Petitioner's Motion for Summary Judgment as set for the 2nd day of October, 2007, for the reason that the file contained no admissible evidence traversing (1) the sworn Petition for Removal with its attachments; filed August 4, 2006; (2) the Motion for Leave to File and

Defendnat-Cross Plaintiff's Original Petition for Relief from Credit Discrimination and Civil Rights Abuses as filed on August 16, 2006; (3) the Notice of Setting and Cross Plaintiff's Motion for Summary Judgment as served and filed with the District Clerk on the 28th day of September, 2006 ; and (4) the Appellate Record from the trial Court reflect that there is no admissible evidence traversing the summary judgment evidence presented by Petitioner, Defendant and Cross Plaintiff in the trial Court , and such party is entitled to reversal and rendering of Judgment under the facts of the case (Clerk's Record, Vol. I, pp 78-100; also, Appendix pp 1-23, ll 31 - 32; A-24, ll 32 - 33; A-41 - A-42, item 2; A-44, ll 20-31; A-51: **V.T.C.A. Civil Practice & Remedies § 16.002(b)(3) and (4)**). *In re D.M.K.*, 242 S.W.3d 863 (3rd Dist. 2007), 86

Notice of Appeal was effectively filed on the 19th day of November, 2007, (Clerk's Record, Vol. I, pp 78-100, 105-118, 141, 165-172), and Appellant's Brief was timely filed on the 12th day of August, 2008, and supplemented on the 12th day of January, 2009.

The Memorandum Opinion of the Court of Appeals affirming the trial Court was issued on the 28th day of May, 2009, with respect to which Petitioner filed a Motion for Rehearing on the 26th day of June, 2009, overruled by the Court of Appeals' panel on the 2nd day of July, 2009, and a Motion for extension of time to file a Petition for Discretionary Review was granted on the 6th day of August, 2009, by the Supreme Court of Texas, but, refused on the 9th

day of October, 2008 (Appendix p. A-1).

The immediate Petition for Writ of Certiorari appears to emanate related to and from an unconstitutional and abusive State prosecution which Petitioner immediately removed to the United States District Court, **Ratcliff v Indymac, etc., et al.**, No. 9:05-CV-00070 JKG/TH, US DC ED TX, Lufkin Division, Doc. Nos., 17, 25, 26, 127; also, District Court of Polk County, Texas Nos 18,176 and 18,177 ; also, see **In re Elijah White Ratcliff, supra**.), as he is denied and cannot enforce in the Courts of Texas his rights under the Constitution and statutory provisions for Civil Rights of persons designated by Title 28, United States Code, Section 1443.

Despite the timely filing and service of the Petition for Removal, the State Presiding Judge continued, under color of authority of State law, upon a course to deprive Petitioner of his freedom by infringing specified State and Federal Constitutional provisions even though no remand Order was entered by the United States District Court (See Ratcliff v Indymac, etc., et al., supra., Doc. Nos. 1, 2, 17, 26, 127).

Following the State trial Court's fabrication of a conviction, Petitioner filed a timely Notice of Appeal (Appendix A, Entry of 10-28-2005).and State Court Petition for Writ of Mandamus (Ibid, Entries of 11-07-2005), but such State appellate courts have refused to address the issues and the relief to which Petitioner is entitled, or require the District Clerk and Court Reporter to provide the plenary Appellate Record, even though it was properly requested by

Petitioner, which Record would show the innocence of Petitioner to the criminal charges against him, consistent with Vernon's Ann. Tex. Rules Ap. Proc. Rules 12.2(a), (b) and (d), 20.2, 27, 35.3 and 38.5(d). (See **Ratcliff v State**, No. 09-558, U.S. No. 09-05-00480 - CR and No. 09-07-00404-CR, supra.,with focus on Brief of Appellant and Preliminary Appendix to Brief of Appellant filed November 7, 2005: Appendix D, entry of 11-07-2005, p. A-9; also, Brief of Appellant Supplemental filed in the Court of Appeals, No. 09-07- 00404-CR, on April 18, 2009: Appendix E: entries of 04-23-2008 and 07-01- 2008, p. A-12).

The partial record, erroneously, does not include proceedings from the Indictment during the calendar year 2005, to September 3, 2007 (*Ibid.*, Appendix D and Appendix E, pp A-7 - A-14), nor particularized items from Petitioner's Fourth, Fifth, and subsequent, notices of Appeal and itemized requests for additional record items (*Ibid.*, Appendix E: Entries of 11-19-2007; 11-28-2007; 12-12-2007; 01-30-2008; 02-20-2008; 02-26-2008; 04-10-2008; and 07-01-2008, pp A-10 - A-14), thereby, beclouding an accurate depiction of the evidence (See *Ibid.*, Brief of Appellant- Supplemental, Argument I to II.B, inclusive: Appendix p. A-12, entry of 7/01/2008).

REASONS FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

SUMMARY OF ARGUMENT

The trial Court's retaliatory Order of January 30, 2007. related to proceeding then pending

before the Court of Appeals, No. 09-05-00480-CR and No. 09-05-00481-CR, and No. 09-07-00404-CR.

The nature of the cause of action by Petitioner, Defendant and Cross Plaintiff below, is in tort arising initially out of a retailer-consumer relationship.

The bases for appellate review derive from gross abuses of discretion including unconstitutional dispositions by the trial Court culminating in the Order and even-tual Judgment contravening the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution by capriciously directing redundant responses from Cross Plaintiff, Petitioner, while abusively denying sanctions or an Order compelling answers against Cross Defendant, Respondent, who failed to timely traverse Cross Plaintiff's Motion for Summary Judgment or answer discovery within the time prescribed by the Rules of Court.

Authorities establishing the illegality of Petitioner's related detention are specified in the Brief of Appellant and Preliminary Appendix filed in the subject Appeal, No. 09-05-00480-CR and No. 09-05-00481-CR, Ninth District of Texas, complemented by the Brief of Appellant-Supplemental filed in that related Appeal, No. 09-07-00404-CR. Ninth District of Texas, and include **United States Code, Const. Amends. IV, V, VI, VII and XIV; Vernon's Ann. C.C.P. art. 4.03, art. 42.12, Sec. 23(a) and (b), and art.**

44.04(a) and (g). *Deitik v State*, **58 S.W.3d 794 (2nd Dist. 2001), Petition for Discretionary Review granted, vacated and remanded, 67 S.W.3d 215, 218, on remand, WL 1481258, Petition for Discretionary Review refused;** *Fullbright v State*, **818 W.W2d 808 (Cr. App. 1991).**

STANDARD OF REVIEW

The Court of Appeals was obligated by statutes, rules of court and precedents to review the evidence under a standard where the defendant as movant is entitled to summary judgment if he (1) disproves at least one element of the plaintiff's theory of recovery; or (2) pleads and conclusively establishes each element of an affirmative defense, thereby, rebutting the plaintiff's cause of action. *Wilson v Harris County Water Control and Improvement District No. 21*, **194 S.W.3d 551)14th Dist. 2006).**

For a plaintiff to be able to recover where the defendant has asserted a counter claim, the plaintiff must prove, as a matter of law, each element of its cause of action and disprove at least one element of the defendant's counter claim. **Vernon's Ann. Rules Civ. Proc., rule 166a(a);** *Rush v Barrios*, 56 S.W.3d 88 (14th Dist. 2001); rehearing overrules, review denied, and rehearing of Petition for Review denied.

After an adequate time for discovery, the party without the burden of proof may, without

presenting any evidence, move for summary judgment on the ground that there is no evidence to support an essential element of the non-movant's claim or defense. The motion must specifically state the elements for which there is no evidence.

ARGUMENT

I. CROSS PLAINTIFF WAS ENTITLED TO AN ORDER DIRECTING CROSS DEFENDANT TO VERIFY OR WITHDRAW ITS RESPONSE TO RULE 197 INTERROGATORIES TO DEFENDANT SERVED AS REQUIRED BY RULE 197(d).

On July 17, 2006, Respondent, Plaintiff and Cross Defendant below, filed in the District Court of Polk County, Texas and served on Petitioner its "Plaintiff's Original Petition, Request for Disclosures and Request for Admissions," No. 22,975, 258th Judicial District of Texas (Clerk's Record, Vol. I, pp 02-14). The Petition sought liability against Respondent, as Defendant, under a defective contractual instrument which named Bank One, N.A., as creditor.

Petitioner, Defendant below, initially appeared with a Petition for Removal in behalf of certain property interests it appeared Respondent sought to encumber (Clerk's Record, Vol. I, pp 15 - 33). Later, Petitioner timely filed an Answer and Cross Petition, specifically in his personal behalf, in the trial Court contemporaneously with the

filing in the United States District Court on August 4, 2006, ultimately invoking diversity jurisdiction under Title 28, United States Code, Section 2201, in addition to Civil Rights jurisdiction pursuant to Title 28, United States Code, Section 1443, et seq, (Clerk's Record, Vol. I, pp 15-33). The subject "Cross Plaintiff's Original Petition for Relief from Credit Discrimination and Civil Rights Abuses" was docketed contemporaneously in the trial Court (Clerk's Record, Vol. I, pp 34-46) and in the United States District Court on August 16, 2006, seeking to extend the relief sought to other interests attached to or associated with Petitioner (Ibid.), in reliance upon Title 28, United States Code, Sections 1331, 1343, 1346, 2201 and 2202, in conjunction with **Title 42, United States Code, Section 1981, 1982, 1983, 1985 and 1988.**

Petitioner obtained service of process on Respondent of the Citation issued by the State District Clerk (Clerk's Record, Vol. I, pp 70-71: Return of Service by Process Server) and, after expiration of the time set by the Citation with the pleading attached thereto, and as prescribed by the Rules of Court, filed his Affidavit for Judgment by Default with the State District Court on September 11, 2006 (Clerk's Record, Vol. I, pp 72-75), to which jurisdiction the proceeding had been remanded. **Fed. Rules Civ. Proc. rule 4(c)(2), 28 U.S.C.A.; Vernon's Ann. Rules Civ. Proc., rules 99, 103, 105, 106(a), 107 and 239.**

On September 28, 2006, Petitioner filed with

the State District Clerk his Notice of Setting and Cross Plaintiff's Motion for Summary Judgment (Clerk's Record, Vol. I, pp 78-100). Petitioner, also, filed and served his Request and Motion for Discovery Order, the attachments to which included the previously served "Rule 194 Request for Disclosures" and "Rule 197 Interrogatories to Cross Defendant" (Clerk's Record, Vol. I, pp 78-104; also, Appendix pp A-34 - A-47). Cross Plaintiff's Rule 194 Request for Disclosures as well as his Rule 197 Interrogatories to Cross Defendant had been acknowledged as received by Counsel for Respondent on December 9, 2006 via Fax, in addition to subsequent receipt via United States Postal Service, more than thirty (30) days before the subject hearing and Order ((Clerk's Record, Vol. I, pp 146-166), and, obviously, more than thirty days prior to the Presiding Judge's Order of January 30, 2007 (Clerk's Record, Vol. I, pp 165-166), with respect to which Petitioner asserted his Constitutional and statutory right to Court of Appeals intervention and supervision (See Notice of Appeal with Affidavit and Request for Preparation of Record, Items 10, 11, 12 and 13 at p. 2 thereof: Appendix pp A-26 - A-28); also, Clerk's Record, Vol. I, pp 167-172, 174-176). **Vernon's Ann. Rules Ap. Proc., rules 20.1(f) and (j), 27 and 38.5(d); Vernon's Ann. Rules Evid. Rule 201(d);** ***Ex Parte Crenshaw***, 25 S.W.3d 761 (1st Dist. 2000), Petition for Discretionary Review refused; ***Atkins Services, Inc. v Tisdale Co., Inc.***, **56 S.W.3d 842 (6th Dist. 2001).**

The immediate proceeding appearedrelated to

Ratcliff v Texas, No. 09-07-00404-CR, Ninth District of Texas,, and Respondent's vague pleadings and evasive responses to Petitioner's discovery documents are factors for which the Rules of Court designedly hold it culpable (Clerk's Record, Vol. I, pp 02-14; also, Motion for Discovery Order served January 9, 2007: Appendix C to Brief of Appellee. Under Rule 194.3, "The responding party must serve a written response on the requesting party within 30 days after service of the request..." unaffected by derivation of the interests from an agency relationship. *Beam v H. H. Chaney, Inc.*, 56 S.W.3d 920 (2nd Dist. 2001), rehearing overruled; *Matagorda County Hospital Dist v Burwell*, 94 S.W.3d 75 (13th Dist. 2002), rehearing denied, Petition for Discretionary Review filed; *National Family Care Life Ins. Co. v Fletcher*, 57 S.W.3d 662 (9th Dist. 2001), review denied, rehearing on Petition for Review denied. Thus, the initial basis for appellate review arises from proceedings culminating in an Order of January 30, 2007, contravening Petitioner's due process and equal protection rights under United States Code, Const. Amends. XIV (Appendix p. A-49), by arbitrarily, capriciously and unreasonably directing redundant responses from Petitioner while denying sanctions or an Order compelling proper responses from Respondent who failed to timely serve a traversing response to Petitioner's Motion for Summary Judgment, or respond to discovery within the thirty (30) day period prescribed by **Vernon's Ann. Rules Civ. Proc., rules 194 and 197.**

Under Rule 197.2, "(a) The responding party must serve a written response on the request-ing party within 30 days after service of the interrogatories... ." As Petitioner's interroga-tories sought information about he nature of Respondent's claim, and its relationship to the creditor named in the instrument attached to its pleadings, such interrogatories are within the scope of discovery, and, thus, a failure to answer, nor an evasive answer, was adequate. *In re SWEPPI, LLP*, 103 S.W.3d 578 (4th Dist. 2003).

II CROSS PLAINTIFF WAS ENTITLED TO AN ORDER DIRECTING CROSS DEFENDANT TO DOCUMENT AND VERIFY ITS RESPONSE TO RULE 194.1 REQUEST FOR DISCLOSURES AS REQUIRED BY RULES 193.4 AND 194.4 WHERE THE REQUEST SPECIFIES AN ENTITY WHOSE MISCONDUCT COMPRISED A FRAUDULENT ACT CREATING A DEFECT IN THE INSTRUMENT RELIED UPON BY PLAINTIFF, CROSS DEFENDANT, WHICH FACTOR WAS KNOWN TO SUCH SUITOR.

On the 9th day of December, 2006, Petitioner, Cross Plaintiff, served on Respondent, Cross Defendant, via FAX, followed by service through the United States Postal Service, a "Rule 194 Request for Disclosures" specifying that they were served pursuant to 194.1 of the Texas Rules of Civil Procedure, and informing that Respondent must serve a written response on the requesting party, Petitioner, within the thirty (30) days period prescribed. However, Respondent

neglected to respond to such Request for Disclosures through the time which included the hearing on Peti-tioner's Motion for Sanctions and an Order compelling discovery responses (Clerk's Record, Vol. I, pp 146-161), 165-166,173, and 177). **Vernon's Ann. Rules Civ. Proc., rules 193.4 and 194.3;** ***Atkins Services, Inc. v Tisdale Co., Inc.*****, supra.**

III. DEFENDANT, CROSS PLAINTIFF, WAS ENTITLED TO AN OBJECT THAT PLAINTIFF, CROSS DEFENDANT, HAD NOT SUFFICIENTLY IDENTIFIED THE PARTY IT SOUGHT TO SUE WHERE TWO OR MORE PERSONS WITH SIMILAR NAMES WERE INVOLVED IN CONTEMPO-RANEOUS LITIGATION AS FIDUCIARIES OR PRINCIPALS OF DEFENDANT, AND VERIFICATION OF IDENTITY FOR THE PARTY INTENDED TO BE SUED SHOULD HAVE BEEN ROUTINE TO ACCOMPLISH.

Respondent, irregularly, incorporated its request for disclosures, in addition to its Request for Admissions, with its initial pleading served on July 17, 2006 (Clerk's Record, Vol. I, pp 02-14), to which Petitioner provided proper responses on August 24, 2006. Such discovery items requested identification of the "Defendant" to which Petitioner responded by referencing himself by identification number and Driver License Number as the Cross Plaintiff while reserving an objection that Plaintiff was the best source to

identify the party it intended to sue (Clerk's Record, Vol. I, pp 49-63, 101-104). **Vernon's Ann. Rules Civ. Proc., rules 197.2(b) and ©.**

Petitioner was involved in proceedings with names identical or similar to Elijah White Ratcliff arising out of he Estate of White, Houston County, Texas; the Ratcliff Estate/Estate of Hardy, Trinity County, Texas in addition to matters in Polk County, Texas, and the United States District Court for the Eastern District of Texas, and not required to suggest to Respondent or speculate about which party it intended to sue under the facts where neither of the prospective defendant entities had any liability to Respondent or the creditor named in the attachment to its original pleading(Clerk's Record, Vol. I, pp 266-276: Affidavit in Support of Objections... [pp 6-7, items 8, 15-17]; Appendix pp A-41 - A-47).

The trial Court has the power and duty to control the discovery process, but it is required to do so within the confinement of the Rules of Civil Procedure. *Haas v George*, 71 S.W.3d 904 (6th Dist. 2004), 915. The discovery rules provide access to assorted information, but they, also, provide effective means for curbing discovery abuse, as timely asserted by Petitioner through his objections prior to each hearing set on his motions for sanctions and a discovery Order, to preserve litigation as a viable, affordable and expeditious dispute resolution mechanism. *In re Weir*, 166 S.W.3d 861 (9th Dist. 2005), 864.

Entitlement of Petitioner to summary judgment, sanctions or an Order compelling disclosures and answers to interrogatories as a movant does not create an appropriate bias favoring Respondent as a movant where Petitioner has complied fully with the Rules of Court applicable to him, and Respondent has dilatorily and unreasonably disregarded and refused to comply with the Rules of Court applicable to such Respondent. This rationale applies, particularly, to interrogatories "because the answers thereto are different in every case. *Nealy v South Lawn Palms Apartments*, 146 S.W.3d 386 (1st Dist. 2006), 394.

IV. DEFENDANT, CROSS PLAINTIFF, WAS ENTITLED TO PROPER IDENTIFICATION OF THE PARTY PLAINTIFF SOUGHT TO SUE BEFORE ATTEMPTING AN INHERENTLY SPECULATIVE RESPONSE PURPORTING TO SPECIFICALLY REFERENCE EVERY PERSON WITH KNOWLEDGE OF RELEVANT FACTS.

Petitioner indicated in his response to Respondent's Request for Disclosures, filed August 24, 2006, objections to the request to name parties "who may be necessary and proper parties to the proceeding until the privy of such Cross Defendant to other parties is disclosed... " However, Petitioner did reference "Southern Chrysler, Plymouth, Dodge, Jeep, Eagle of Lufkin, Texas" in addition to "Bank One and its

successors and assigns following the calendar year 2001 to the present." As conceivable "necessary and proper parties." Thus, the prerequisites of Vernon's Ann. Rules Civ. Proc., rules 197.2, were clearly met, and Petitioner should not have been prejudiced for asserting his rights as a litigant. Considerations recognized by courts in earlier precedents involving interrogatories are, similarly, applicable to specific requests for disclosures because the responses thereto are different in every case. *Nealy v South Lawn Palms Apartments*, **supra.**

V. DEFENDANT, CROSS PLAINTIFF, WAS ENTITLED TO PROPER IDENTIFICATION OF THE INTENDED DEFENDANT AND THE ACQUISITION SOURCE FOR ANY TITLE CLAIMED BY PLAINTIFF, CROSS DEFENDANT, PRELIMINARY TO ASSESSING AND DETERMINING HIS EXPERT WITNESSES.

In Petitioner's response to Respondent's Request for Disclosures and Request for Admissions filed in the trial Court on August 24, 2006 (Clerk's Record, Vol. I, pp 49-63), he entered objections to Respon-dent's "fishing expedition" in requesting the names of Petitioner's expert witnesses prematurely and before Respondent's relationship to the contractual instrument attached to its Original Petition was clarified through answers to interrogatories contemplated from such Respondent. Such objection is within

the objectives of **Vernon's Ann. Rules Civ. Proc., rules 193.4 and 194.3**. Also, Petitioner, being involved in pending legal proceedings meriting a claim that the contents requested constituted privileged information, and observing that Respondent had adduced no summary judgment evidence in support of his claim, had no duty set a special hearing on the objections. **Vernon's Ann. Rules Civ. Proc., rules 193.4(b).**

VI. IT IS PRESUMPTUOUS AND OBJECTIONABLE UNDER APPLICABLE RULES OF COURT FOR DEFENDANT, CROSS PLAINTIFF, TO BE COMPELLED TO CHARACTERIZE A DOCUMENT AS A CON-TRACT WHERE SUCH PARTY HAS NOT DETERMINED THE INSTRUMENT TO POSSESS SUCH STATUS, AND THAT FACTOR IS A CONTROLLING ISSUE IN THE CASE.

Petitioner objected to Respondent's Request for Disclosures and Request for Admissions which solicited of Petitioner whether the instrument attached to its Original Petition was a "contract" (Clerk's Record, Vol. I, pp 49-63, 266-276), **Vernon's Ann. Rules Civ. Proc., rules 193.2.**

Vernon's Ann. Rules Civ. Proc., rule 197.1, prescribes the utilization of interrogatories to parties, but it excepts "the proof the party intends to offer at the trial."

Vernon's Ann. Rules Civ. Proc., rule 194,

provides for the use of disclosures, but provision for objections is prescribed by **Vernon's Ann. Rules Civ. Proc., rules 193.2 and 197.1.** Noteworthy, further, pertinent to the issue of redundancy and unnecessary burdens, **Vernon's Ann. Rules Civ. Proc., rule 193.4**, applies to interrogatories as well as disclosures. Thus, Respondent's failure to request a hearing on Petitioner's timely objections effectively sustains such objections. **Vernon's Ann. Rules Civ. Proc., rule 193.4(b).**

VII. A DEFENDANT MAY PROPERLY OBJECT TO IRRELEVANT INTERROGA-TORIES AND REQUEST FOR DISCLOSURES WHICH PRESENT NO CORRELA-TION TO ANY ISSUE WHICH COULD ARISE IN THE PROCEEDING.

Vernon's Ann. Rules Evid. Role 402, provides, generally, "Evidence which is not relevant is inadmissible." Thus, when Respondent's Request for Disclosures, and subsequent interrogatories, were observed to seek speculation about the expert wit-nesses, theories upon which Petitioner relied, persons with knowledge of the case, the arrest record of Defendant and other irrelevant and prospective evidence, with-out a proper basis, Petitioner included objections thereto in "Defendant-Cross Plaintiff's Disclosures and Responses to Request for Admissions" as served and filed with the trial Court on August 24, 2006 (Clerk's Record, Vol. I,

pp 49-63), and further refined in the Affidavit attached to Petitio-ner's Motion for Summary Judgment and reiterated as filed on September 28, 2006 (Clerk's Record, Vo. I, pp 78-100), and in the Affidavit attached to Petitioner's "Objec-tions to Summary Judgment for Cross Defendant LHR, Inc." of September 11, 2007 (Clerk's Record, Vol. I, pp 260-276; Appendix pp A-40 - A-47).

Such objections are clearly within the contemplation of **Vernon's Ann. Rules Civ. Proc., rule 193.4(b)**, and effectively sustained by Respondent's failure to set a timely hearing thereon.

The Court should not have even enter-tained the "death penalty" against Peti-tioner as such sanction must justify the presumption that such party's claim and defense lacks merit. *Chrysler Corp. v Blackman*, 841 S.W.2d 844 (Tex. 1992), 849-850; *In re Dynamic Health, Inc.*, 32 S.W.3d 876 (6th Dist. 2000), Petition for Discretionary Review refused.

VIII. A DEFENDANT, CROSS-PLAINTIFF, IS ENTITLED TO SANCTIONS AGAINST HIS ADVERSARY ARISING OUT OF SUCH ADVERSARY'S ARBITRARY, UNREASONABLE AND CAPRICIOUS ABUSE OF DISCOVERY AS WELL AS ITS DUTIES AS A LITIGANT UNDER THE RULES OF PLEADING.

The trial Court should have granted sanctions

against Respondent consistent with authorities referenced in Petitioner's Motion for Summary Judgment, served and filed on September 28, 2006 (Clerk's Record, Vol. I, pp 78-100), in addition to the "First Supplemental Motion for Discovery Order" filed below and served on June 18, 2007 (Clerk's Record, Vol. I, pp 210-230; Appendix pp A-26 - A-28), including **Vernon's Ann. Rules Civ. Proc., rules 166a(a), (c), (d), (f), (g), (h) and (i); 191.3(a), (d) and (e); 192.1(a) and (d); 192.4(a); 192.6, 193.1; 193.2; 193.4; 194.1; 194.2(a), (b), ©, (d), (e), (f), (g), (h), (i) and (l); 194.3; 197.1; 197.2;198.2(a) and (b); and 215.1, (b)(3)(A) and (B), (c) and (d).**

The cited authorities entitled Petitioner to sanctions in lieu of an Order compelling true and complete answers to the Request for Disclosures and Interrogatories to Cross Defendant arising out of such Respondent's disregard for the legal process as prescribed arising out of Respondent's inherently malicious initiation and prosecution of the proceedings below (Clerk's Record, Vol. I, pp 02-14, 34-36, 72-7678-100, 260-276: Affidavit ¶¶ 16, 18). *Atkins Services, Inc. v Tisdale Co., Inc.*, **supra.**

IX. THE REFUSAL TO PROVIDE TIMELY VERIFIED RESPONSES TO A REQUEST FOR DISCLOSURES AND INTERROGATORIES ATTACHED TO A MALICIOUS PROSECUTION ENGAGED BY THE NON-RESPONDING PLAINTIFF ENTITLED THE REQUESTING DEFENDANT, CROSS

PLAINTIFF, TO JUDICIAL RELIEF AS A MATTER OF DUE PROCESS AND EQUAL PROTECTION WITHIN THE INHERENT POWERS OF THE APPELLATE COURTS.

Respondent is a corporate accumulator of defective business documents operating on a national basis, and the Attorney assigned to the case initially, Hon. James Hull, was a seasoned legal expert when the action was filed, process was served, and discovery was initiated, albeit prematurely. Thus, the Presiding Judge below could not reasonably presume that he and his firm were naive about the requirements of **Vernon's Ann. Rules Civ. Proc., rules 193.4 and 194.2, Vernon's Ann. Rules Civ. Proc., rules 166a(a), 215.1 and 215.2(b)**. *Haas v George*, **supra.**

Respondent's disregard for the Rules of Court were so flagrant that it was appro-priate to join Petitioner's Motion for Sanctions with his Motion to compel Discovery at a single setting (Clerk's Record, Vol. I, pp 78-104). *Atkins Services, Inc. v Tisdale Co., Inc.*, **supra.** *Irving v Freightliner, L.L.C*, 200 Fed. Appx. 756 (Tex. 5th Cir. 2006).

Upon entry of the biased Order by the Presiding Judge of the trial Court, contravening Petitioner's rights to due process and equal protection by capri-ciously granting Respondent's motion for a discovery order with no merit while refusing to grant Petitioner's meritorious Motion

for a Discovery Order, it became plausible to seek intervention by the Court of Appeals in contesting the subject unconstitutional Order. *In re Sheppard*, 193 S.W.3d 181 (1st Dist. 2006).

X. DEFENDANT, CROSS PLAINTIFF, IS ENTITLED TO SUMMARY JUDGMENT AND SANCTIONS ARISING OUT OF THE CROSS DEFENDANT'S DILATORY, ARBITRARY AND UNREASONABLE REFUSAL TO PROVIDE THE PRESCRIBED DISCOVERY DULY REQUESTED BY CROSS PLAINTIFF IN THE CONTEXT OF THE MALICIOUS PROSECUTION ATTACHED TO PLAINTIFF, CROSS DEFENDANT'S CONDUCT.

The Citation served on Respondent directed it to appear or answer with respect to the attached "Original Petition for Relief From Credit Discrimination and Civil Rights Abuses (Clerk's Record, Vol. I, pp 34-48) on or before the Monday next following the expiration of twenty (20) days after service of the subject process. **Vernon's Ann. Rules Civ. Proc., rule 99(b) and (c)**. Upon the failure of Respondent to comply with the Citation, **Vernon's Ann. Rules Civ. Proc., rule 239**, provides that a judgment by default may be taken against Respondent (Clerk's Record, Vol. I, pp 47-48).

Observing Respondent's default, Peti-tioner filed his Affidavit for Judgment by Default with the District Clerk below on September 11, 2006

(Clerk's Record, Vol. I, pp 70-76, to which Petitioner was unequivocally entitled. **Vernon's Ann. Rules Civ. Proc., rules 99, 103(2), 105, 106(a)(2), 107 and 239; Fed. Rules Civ. Proc., rule 4(c)(2), 28 U.S.C.A.;** *Haas v George,* **supra.**

The Docket Sheet fails to show an entry of default which nonfeasance justified the further visualization of an intent on the part of the trial Court to deny Petitioner due process and equal protection as mandated by United States Code, Const. Amend. XIV, and such malfeasance was corroborated and further substantiated by the trial Court's further biased orders (Clerk's Record, Vol. I, pp 141, 165-166, 173, 177 and 288 - 290), erroneous granting Respondent's motions while denying Petitioner's more justified motions for Summary Judgment, sanctions, and verified responses to Petitioner's Request for Disclosures and Interrogatories to party. Vernon's Ann. Tex. Const., Art V, Section 6; V.T.C.A. Government Code, §§. 21.001, 22.220 and 22.221; ***In re Sheppard*****, supra.**

Petitioner, as a Movant, is entitled to summary judgment by virtue of (1) disproving each element of Respondent's theory of recovery (Clerk's Record, Vol. I, pp 02-14); (2) pleading and conclusively establishing each element of an affirmative defense (Clerk's Record, Vol. I, pp 15-34: Petition for Removal with Affidavit; pp 266-276:

Affidavit of Facts attached to Defendant Cross-Plaintiff's Motion for Summary Judgment of September 28, 2006; p. 16, item XII; also, Appendix pp A-41 - A-47 in addition to Respondent's Discovery concessions: Appendix pp A-23 - A-24). V.T.C.A. Civil Practice & Remedies §§ 16.002(a) and 16.004(a)(3) and (4); *Wilson v Harris County Water Control and Improvement District No. 21*, **supra. Thus, Petitioner is entitled to summary judgment by virtue of the exclusive summary judgm**ent evidence without traverse (Clerk's Record, Vol. I, pp 15-46, 78-100), as the affidavits referenced and comprising the Appellate Record prove without contravention each element of Petitioner's cause of action. **V.T.C.A. Civil Practice & Remedies §§ 16.004(a).** Similarly, the affidavits disprove each element of Respondent's claim without admissible contradiction[1]. **V.T.C.A. Civil Practice & Remedies § 16.002(a)(3) and (4). Vernon's Ann. Rules Civ. Proc., rule 166a(a);** *Rush v Barrios*, **supra.**

XI. THE PREJUDICIAL FACTOR ENCOUNTERED BY PETITIONER ARISING

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[1]Counsel for Respondent attempted to generate favorable evidence through his answers to interrogatories stating that Petitioner was using one of his assignor's credit cards in the subject transaction which suggestion is blatantly false, in addition to its inadmissibility when proffered by such responding party. **Vernon's Ann. Rules Civ. Proc., rule 197.3.**

OUT OF HIS WRONGFUL CRIMINAL PROSECUTION, TX Ct. Cr. Ap. NO. PD-0215-09, SHOULD BE RECTIFIED HEREIN BY FURTHER WRIT OF CERTIORARI.

For purposes of economy, in lieu of repeating each argument presented by the Petition for Writ of Certiorari: Ratcliff v Texas, No. 09-558, U. S. Sup. Ct., Petitioner proposes to serve Counsel for Respondent with copies of the Petition in triplicate along with the Notice from the Clerk that the immediate Petition has been docketed.

It suffices to reiterate that Petitioner's right to sanctions and summary judgment as proposed by him has excogitative historical precedent as a proper legal course (Appendix pp A-16, A-21, A-23 - A-24, A-26 - A-28, A-32 - A-47). *Braden v South Main Bank*, 837 S.W.2d 733 (14th Dist. 1992), rehearing denied, writ denied, rehearing of writ overruled, certiorari denied 113 S.Ct. 2337, 508 U.S. 908, 124 L.Ed. 248.

CONCLUSION:

The decision of the trial Court, as redrafted and affirmed by the Court of Appeals, striking the pleadings of Petitioner and entering summary Judgment for Respondent without a noticed hearing, should be reversed as totally contrary to applicable law including the Rules of Court governing discovery and pre-trial proceedings.

This Court should, furthermore, render summary

Judgment for Petitioner based on the facts supported by the Appellate Record indicating that Respondent has presented no admissible summary judgment evidence traversing the evidence properly presented and highlighted by Petitioner revealing that there remains in the proceeding no genuine issue as to any material fact, and Petitioner, who was the target of a malicious prosecution in the trial Court, is entitled to a summary Judgment for damages, sanctions and costs of court as a matter of law.

As suggested in the related Petition for Writ of Certiorari, **Ratcliff v Texas,** No. 09-0558, a delay, in adjudicating a direct criminal appeal beyond two years from the filing of the notice of appeal gives rise to a presumption that the State appellate process is deffective. Thus, it was inappropriate for the State appellate courts to permit a bias against Petitioner arising from the deficiencies attached to his wrongful detention and incarceration. *Harris v Champion*, 15 F.3d 1538 (10th Cir. 1994), 1556; *Geanes v Henderson,* 725 F. Supp. 681 (E.D. NY 1989, 685.

Date: December 10, 2009

_____

PETITIONER

Elijah W. Ratcliff
P. O. Box 862
Livingston, Texas 77351
Ph. 903 948-3089

AFFIDAVIT OF VERACITY

Affiant, Elijah White Ratcliff, states under penalties of perjury as if executed before a proper Notary Public, and in accordance with Title 28, United States Code, Section 1746, that each of the matters of fact asserted in the foregoing Petition for Writ of Certiorari is within his personal knowledge true and correct, and the contents of the Appendix thereto accurately depicts the excerpts represented thereby, *in toto*.

SUBSCRIBED this ____ day of December, 2009.

_____

AFFIANT

No. _____

TX Sup. Ct. No. 09-0631
COA No. 09-07-00566-CV/
COA No. 09-06-00099-CV

In The

Supreme Court Of The United States

ELIJAH WHITE RATCLIFF,
Petitioner

v.

LHR, INC.,
Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS FOR THE NINTH
DISTRICT OF TEXAS

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DATE: 10/9/2009

OFFICIAL NOTICE FROM '
SUPREME COURT OF TEXAS

Post Office Box 12248

Austin, Texas 78711-2248

RE: Case No. 09-0631

COA # 09-07-00566-CV

STYLE: ELIJAH W. RATCLIFF

v

LHR, INC.
TC #: CIV 22975

Today the Supreme Court of Texas denied the petition for
review in the above-referenced case.

MAIL TO:

MR. ELIJAH W. RATCLIFF
111 PR 294
OAKWOOD TX 75855

COURT OF APPEALS
NINTH DISTRICT OF THE STATE OF TEXAS
1001 Pearl Street, Suite 330
Beaumont, Texas 77701

Judgment entered: May 28, 2009

No. 09-07-00566-CV

Elijah W. Ratcliff
v.
LHR, Inc.

Appealed from the Ninth District Court of Polk County, Texas
Opinion by Justice Hollis Horton I

This cause was heard on the record of the Court below, and the same being considered; it is the opinion this Court that there was no error in the judgment. It is therefore ordered that the judgment of the Court below is in all things AFFIRMED. No costs are assessed as the appellant filed an affidavit of inability to pay costs. A copy of this judgment shall be certified below for observance.

Carol Anne Flores
Clerk of the Court

In The Court of Appeals
Ninth District of Texas at Beaumont
NO. 09-07 -00566-CV
ELIJAH W. RATCLIFF, Appellant
v.
LHR, INC., Appellee

On Appeal from the 258th District Court
Polk County, Texas
Trial Cause No. CIV 22975

MEMORANDUM OPINION

MAY 28 2009
CAROL ANNE FLORES, CLERK
COURT OF APPEALS
NINTH DISTRICT
Beaumont, Texas

Elijah ah W. Ratcliff appeals from the trial court's final judgment in Cause Number CIV 22975. The trial court's judgment reflects that it granted the motion for summary judgment of the plaintiff, LHR, Inc., on its breach of contract claim against Ratcliff and granted LHR' s no evidence motion for summary judgment on Ratcliffs counterclaims. We affirm.

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Background

In July 2006, LHR sued Ratcliff for breaching a retail installment contract under which Ratcliff had purchased a vehicle. The retail installment contract originated in November 2001, and LHR subsequently acquired it by assignment from Bank One. Under the contract, Ratcliff promised to pay $357.95 for sixty-six months. According to LHR,

Ratcliff failed to make the promised payments and LHR claimed $17,968.76 in damages.

Ratcliff first removed the case to federal court, but that court remanded the case to state court. In August 2006, Ratcliff filed counterclaims against LHR for "relief from credit discrimination and civil rights abuses." In his counterclaim, Ratcliff complains about the car dealership that sold him the car, a 2001 Chrysler Sebring, and he asserts that Bank One knew and acquiesced in "the irregularities and illegalities tainting the subject transaction."

Nevertheless, Ratcliff never sought to make Bank One or the dealership, where he purchased the vehicle, parties in the case.

On June 15, 2007, LHR filed a motion for summary judgment on its contract claim and a no evidence motion for summary judgment on Ratcliff's counterclaims. On June 20, 2007, Ratcliff filed a "First Supplemental Motion for Discovery Order" in which he requested the court to compel LHR "to give proper responses to [his] Rule 194 Request for Disclosures and Rule 197 Interrogatories .... " On July 5, 2007, LHR supplemented its answers to interrogatories; subsequently, although Ratcliff continued to assert that LHR had not met its discovery obligation, Ratcliff failed to secure a hearing on his Motion for Discovery.

In September 2007, LHR filed its first amended motion for summary judgment on its contract claim which it combined with a no evidence motion for summary judgment on Ratcliffs counterclaims. On September 11, 2007, Ratcliff filed a motion requesting sanctions against LHR for its alleged failure to "give proper responses" to his requested discovery. Ratcliff also filed a response to LHR' s combined motion for summary judgment and no evidence motion for summary judgment. Ratcliff attached his affidavit to the response; he complained about the adequacy of LHR's discovery responses.

The court conducted a hearing on LHR' s motions for summary judgment on October 30, 007. There is a transcript of the hearing; it reflects that Ratcliff as present and was given an opportunity to present argument. The trial court granted LHR' s summary judgment motion and awarded LHR $17,968.76 on its contract claim and $5,989.59 in attorney's fees.

The trial court also granted LHR' s no evidence motion for summary judgment on Ratcliff 's counterclaims. In eleven issues, Ratcliff appeals.

Timing of Summary Judgment Hearing

Most of Ratcliff s issues on appeal concern his complaint that the trial court erred in not compelling LHR to more thoroughly answer his discovery requests. Although Ratcliff's complaints on appeal are not entirely clear, we construe Ratcliff's issues to assert that the

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trial court should have allowed more time for discovery prior to disposing of the case on summary judgment.

LHR sued Ratcliff in July 2006, claiming discovery would be conducted under level one of the

discovery control plan. See TEX. R. CIV. P. 190.2. Ratcliff filed his counterclaims against LHR in August 2006. Ratcliff propounded requests for disclosure and ten interrogatories to LHR on December 9, 2006. LHR responded to Ratcliffs discovery on January 11, 2007, and supplemented its responses to the interrogatories on July 5, 2007.

LHR's supplemental responses to the interrogatories were filed as part of the record. LHR filed its no evidence motion for summary judgment on June 15,2007, and its amended no evidence motion for summary judgment on September 10, 2007. In response to LHR's amended motion, Ratcliff filed objections to the motion on September 12, 2007. The summary judgment hearing occurred on October 30, 2007. Thus, over a year expired between the time LHR and Ratcliff filed claims against each other and the date the trial court granted LHR affirmative relief on its summary judgment and disposed of Ratcliff's counterclaims on LHR's no evidence motion.

Appellate courts review a trial court's determination of whether there was an adequate time for discovery on a case-by-case basis under an abuse of discretion standard. Specialty Retailers, Inc. v. Fuqua, 29 S.W.3d 140, 145 (Tex. App.-Houston [14th Dist.] 2000, pet. denied). To preserve a complaint that the trial court's decision on a summary judgment

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motion was premature, the party claiming it did not have adequate time for discovery must file either an affidavit explaining the need for further discovery or a verified motion for continuance. Tenneco, Inc. v.

Enterprise Prods. Co., 925 S.W.2d 640, 647 (Tex. 1996).

Ratcliff did not file a motion for continuance. He did, however, file an affidavit in support of his objections to LHR's combined motions for summary judgment. Nevertheless, in this level-one discovery case, Ratcliff's affidavit fails to sufficiently explain the necessity for further discovery on the issues raised by LHR' s motions or to sufficiently explain the necessity for further discovery on his counterclaims.

For instance, Ratcliff's affidavit does not specify the additional necessary discovery he believed to be required to adequately respond to LHR's motions for summary judgment.

Rather, Ratcliff generally asserts that LHR had not answered the interrogatories by fully disclosing related parties or other parties with knowledge concerning the transaction.

Further, while Ratcliff filed a motion to compel after LHR filed its motions for summary judgment, the record does not show that he ever obtained a hearing on his motion. Moreover, Ratcliff propounded ten interrogatories and LHR responded to them all, including supplementing its responses more than three months before the summary judgment hearing.

Even if the trial court had considered Ratcliffs objections, our review of LHR's responses leads us to conclude that LHR's answers adequately responded to Ratcliffs interrogatories.

On appeal, because the record does not contain LHR 's responses to the requests for

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disclosure, Ratcliff has failed to produce a record to carry his burden of persuasion that the response to the disclosure requests are inadequate. See TEX. R. CIV. P. 194.1; TEX. R. APP. P. 44.1 (a). Finally, at the summary judgment hearing, Ratcliff did not request a continuance for lack of adequate discovery or identify the additional discovery, if any, that he needed to adequately respond to LHR's motions. Under these circumstances, considering (1) the amount of time that passed between Ratcliff filing his counterclaims against LHR and the date of the summary judgment hearing, (2) Ratcliff's lack of diligence in securing a hearing on his complaints about the adequacy of LHR' s discovery responses, (3) Ratcliff' s failure to bring his complaints concerning the adequacy of LHR's discovery responses to the trial court's attention during the summary judgment hearing, and (4) Ratcliff s failure to identify the additional discovery he believed necessary to respond at the hearing, we cannot conclude that the trial court abused its discretion in proceeding to judgment. See Specialty Retailers, 29 S.W.3d at 145.

To the extent that Ratcliffs issues complain that the court should have delayed proceeding to judgment, they are overruled.

No Evidence Motion for Summary Judgment on Ratcliff's Counterclaim

We next address Ratcliff s issues that we construe to be a challenge to the merits of the trial court's decision to grant LHR's no evidence motion for summary judgment. After an adequate time for discovery, the party without the burden of proof may, without presenting evidence, move for summary judgment on the ground that there is no evidence to

support an essential element of the adverse party's claim or defense. TEX. R. CIv. P. 166a(I).

When the no evidence motion is in proper form, the burden shifts to the respondent to produce summary judgment evidence raising a genuine issue of material fact regarding each element challenged. Mack Trucks, Inc. v. Tamez, 206 S.W.3d 572,582 (Tex. 2006); Weaver v. Highlands Ins. Co., 4 S.W.3d 826,829, n.2 (Tex. App.- Houston [1st Dist.] 1999, no pet.).

A fact issue exists if the evidence "rises to a level that would enable reasonable and fairminded people to differ in their conclusions." King Ranch, Inc. v. Chapman, 118 S.W.3d 742, 751 (Tex. 2003). If the evidence does no more than create a mere surmise or suspicion of fact, less than a scintilla of evidence exists, and summary judgment is proper. Id.; see also TEX. R. CIV. P. 166a(I). When reviewing a no evidence motion for summary judgment, appellate courts must disregard all contrary evidence and inferences, and review the evidence in the light most favorable to the non-movant. King Ranch, 118 S. W.3d at 751.

LHR's no evidence motion for summary judgment challenges one or more elements of each of Ratcliff s counterclaims against LHR. Ratcliff s objections to LHR' s motion, liberally construed as Ratcliff s response, address only the issue of the adequacy of discovery; Ratcliff did not produce any evidence to raise a genuine issue of material fact on his counterclaims.

Because Ratcliff failed to produce more than a scintilla of evidence, the trial court properly granted

LHR's no evidence motion for summary judgment disposing of Ratcliff s

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counterclaims. To the extent Ratcliff's issues argue the trial court erred in granting LHR' s no evidence motion for summary judgment, we overrule those issues.

Summary Judgment on LHR' s Contract Claim

We also liberally construe Ratcliff s brief as raising an issue that questions whether the trial court properly granted LHR ~ s motion for summary judgment on its breach of

contract claim. Appellate courts review a trial court's decision to grant a traditional summary judgment under a de novo standard. Provident Life & Accident Ins. Co. v. Knott, 128 S. W 3d 211,215 (Tex. 2003). To succeed in a traditional motion for summary judgment, the movant must establish that there is no genuine issue of material fact so that the movant is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a©; W. Invs., Inc. v. Urena, 162 S.W.3d 547, 550 (Tex. 2005). "A plaintiff moving for summary judgment must prove that it is entitled to summary judgment as a matter of law on each clement of its cause of action." Winchek v. Am. Express Travel Related Servs. Co., Inc., 232 S.W.3d 197, 201 (Tex.

App.-Houston [1st Dist.] 2007, no pet.). Once the movant conclusively establishes its cause of action, the burden shifts to the non-movant to respond with evidence raising a genuine issue of material fact that would preclude summary judgment. See Rhone-Poulenc, Inc. v. Steel, 997 S.W.2d 217, 222-23 (Tex. 1999). We consider the evidence in the light most favorable to the non-movant and resolve any

doubt in the non-movant's favor. Nixon v. Mr. Property Mgmt. Co., 690 S.W.2d 546, 548-49 (Tex. 1985). When "the trial court's order

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granting summary judgment does not specify the basis for the ruling, we must affirm the trial court's judgment if any of the theories advanced are meritorious." Urena, 162 S.W.3d at 550 (citing Rogers v. Ricane Enters., Inc., 772 S.W.2d 76, 79 (Tex. 1989)).

To recover for breach of contract, a plaintiff must prove the existence of a valid contract, that the plaintiff performed, that the defendant breached the contract, and that the defendant' s breach caused plaintiff injury. Winchek, 232 S. W.3d at 202. Recovery of attorney's fees from an adverse party is allowed when a contract or statute permits the recovery. Tony Gullo Motors L L.P. v. Chapa, 212 S.W.3d 299,310 (Tex. 2006).

In this case, LHR attached the installment contract between Bank One and Ratcliff to its summary judgment motion to evidence the written contract. LHR's motion also contains affidavits stating that Bank One assigned the contract to LHR. The affidavits explain that Ratcliff promised to pay for the goods he purchased under the contract, but that he breached the promise by refusing to pay the agreed installments specified under the contract, and as a result, LHR suffered $17,968.76 in damages. The affidavits' attachments include authenticated copies of correspondence between Bank One and Ratcliff and LHR and Ratcliff requesting payment following Ratcliff's failure to pay the promised installments. The sworn "Statement of Account" is consistent with the amount that LHR claims in damages, $17,968.76. We conclude that LHR' s motion for summary judgment on its breach

of contract claim conclusively establishes its cause of action and therefore, Ratcliff bore the burden of raising a genuine issue of material fact at the hearing.

With respect to the trial court' s award to LHR of attorney's fees, LHR moved for attorney's fees in its motion for summary judgment and argued that the award was appropriate because the contract at issue provided for recovery of attorney's fees in the event of default; LHR also asserted in its motion that it was authorized by statute to recover its attorney's fees. See TEX. CIv. PRAC. & REM. CODE ANN. §§ 38.001,38.002 (Vernon 2008) (containing the statutory procedure governing the recovery of statutory attorney's fees for written breach of contract claims).

Ratcliff's installment contract, attached as part of LHR's summary judgment proof, provides for the recovery of attorney's fees in the event of the debtor's default. An affidavit by an attorney referenced in LHR's summary judgment motion and contained in the clerk's record asserts the reasonable and necessary fees incurred in this matter are at least $5,989.59.

Additionally, the attorney's affidavit explains that LHR demanded payment of its claim more than thirty days before it filed its motion for summary judgment and that the claim remained unpaid. Ratcliff offered no summary judgment evidence to dispute any of the elements of LHR's beach of contract claim or its attorney's fee claim. The affidavit attached to Ratcliff's objections to LHR's motion for summary judgment addresses Ratcliff's complaints about

discovery. Even if we liberally construed Ratcliffs affidavit in the trial court and briefs filed in this Court to assert an argument that he was not the proper party to a claim that LHR obtained by an assignment, we note that Ratcliff admits in his reply brief that "there is no dispute that Elijah W. Ratcliff, Appellant, is a proper party to the immediate proceeding." Moreover, Ratcliff also specifically states in his reply brief that he does not contend that the document he executed was not contractual in nature. Under Texas law contracts for debt are generally assignable. See, e.g., Crim Truck & Tractor Co. v, Navistar Int'l Transp. Corp., 823 S.W.2d 591, 596 (Tex. 1992).

In summary, viewing the evidence in the light most favorable to Ratcliff, he failed to respond with

evidence raising a genuine issue of material fact that would preclude LHR's summary judgment on its contract claim. See Rhone-Poulenc, 997 S.W.2d at 222-23; see also Mr. Property Mgmt. Co., 690 S.W.2d at 548-49. After reviewing the evidence, we find that LHR established its beach of contract claim and attorney' s fees award as a matter of law and that no genuine issue of material fact exists. TEX.R. CIV. P.166a©; Urena, 162 S.W.3d at 550. Accordingly, we conclude that the trial court did not err in granting LHR's motion for summary judgment on its contract claim or in awarding LHR a recovery of attorney's fees. To the extent that one of Ratcliff's issues challenge the trial court's grant of summary judgment on LHR's contract claim and attorney's fees award, we overrule those issues.

We hold the trial court properly granted LHR's motion for summary judgment on its contract claim

and attorney's fees award and properly granted LHR's no evidence motion for summary judgment disposing of Ratcliff s counterclaim. Having overruled all of Ratcliff's issues, we affirm the judgment of the trial court.[1]

AFFIRMED.

HOLLIS HORTON

Justice

Submitted on April 2, 2009

Opinion Delivered May 28, 2009

Before McKeithen, C.J., Gaultney and Horton, JJ.

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[1] In his reply brief, Ratcliff raises additional issues that were not included in his original brief. Because the issues are not properly before us, we do not address Ratcliff's new issues, and we limit our analysis to the issues raised in Ratcliff's opening brief. Dallas County v, Gonzales, 183 S.W.3d 94, 104 (Tex. App=Dallas 2006, pet. denied) ("A reply brief may not be used to raise new issues."); see also TEX. R. App. P. 38.3.

APPENDIX B

Elizabeth E. Coker
P.O. Box 1115
Groveton, TX 75845
Telephone (936) 642-2512
August 20, 2007
Polk, San Jacinto & Trinity Counties
Facsimile (936) 642-2312

RE: Cause No: CIV22,975 - LHR, Inc. vs Elijah W. Ratcliff; In the 258t1l Judicial District Court of Polk County, Livingston, TX

NOTICE OF HEARING

The above styled case has been scheduled for Motion for Summary Judgment on Tuesday, October 2.2007 at 9:30 A.M. in the District Courtroom of the Polk County Courthouse, located at 101 W. Church Street, Livingston, TX.
All attorneys and interested parties must be present at the above specified time and date and be ready to proceed. Please be advised that pursuant to rule 165a(1) of the Texas Rules of Civil Procedure, there is a possibility the case will be dismissed for want of prosecution if you fail to appear at this hearing.

Peyton Reed
District Court Coordinator
NOTICES MAILED/FAXED TO:
Brian Staley
6200 Savoy, Ste 440
Houston, TX 77036

Elijah Ratcliff
P.O. Box 391
Livingston, TX 77351

cc: Honorable Kathy Clifton, District Clerk

Juanita A. Aguilar
District Court Coordinator

Grace Caka
Official Court Reporter

Tracy Galloway
Bailiff
***
LHR,INC.
vs.
ELIJAH W. RATCLIFF
NO. CIV22975
JUDGMENT
§
IN THE DISTRICT COURT, 258TH JUDICIAL
POLK COUNTY, TEXAS

BE IT REMEMBERED that on this date came on to be heard Plaintiff/Counter-Defendant's Motion for Summary Judgment in the above-captioned and numbered cause; whereupon, the Court proceeded to consider Plaintiff/ Counter-Defendant's motion, together with the affidavit in support thereof, and the pleadings on file in this cause; and having heard the arguments of counsel, and being of the opinion that Plaintiff/Counter-Defendant's cause of action is founded upon a sworn account, or a claim for a liquidated money demand based upon written contract or business dealings between the parties and that no material issue of fact exists in this cause; and that, therefore, Plaintiff/Counter-Defendant is entitled to a judgment from and against the said Defendant/Counter-Plaintiff, in the sum and amount of $17,968.76, together with interest on such indebtedness at the rate of6% per annum from March 15, 2006 until paid, for reasonable statutory attorneys' fees which the Court finds the Plaintiff/Counter-Defendant has agreed to pay to Plaintiff/Counter-Defendant's attorneys of record, and which, after considering the Court's file and the affidavit of Plaintiff/Counter-Defendant's attorney, the Court finds the amount of$5,989.59 to be reasonable, for all costs of court in this behalf expended, and interest on said attorneys' fees and costs of court at the rate of 8.25% per annum from date of judgment until paid; and it is therefore ORDERED, ADJUDGED and DECREED, by this Court, that the Plaintiffs Counter-Defendant,

...

LHR, INC., does have and recover judgment from and against the Defendant/Counter-Plaintiff,

ELIJAH W. RATCLIFF (S.S. No: XXX-XX-6124), in the sum and amount of$17,968.76, together with interest on said indebtedness at the rate of 6% per annum from March 15, 2006 until paid, plus $5,989.59 for Plaintiff/Counter-Defendant's reasonable, statutory attorneys' fees, for all costs of court in this behalf expended, interest on said attorneys' fees and costs of court at the rate of 8.25% per annum from date of judgment until paid; and it is further ORDERED, ADJUDGED and DECREED, by this Court, that Defendant/Counter-Plaintiff, ELIJAH W. RATCLIFF (S.S. No: XXX-XX-6124) shall take nothing by way of his counterclaim against the Plaintiff/Counter-Defendant LHR, INC.

It is further ORDERED that Plaintiff/Counter-Defendant shall have all such writs and orders as shall become, in its behalf, necessary to enforce the execution of this judgment. This judgment finally disposes of all parties and claims and is appealable. All relief not expressly granted herein is denied.

SIGNED this 30th day of October, 2007.

s// Elizabeth Coker

JUDGE PRESIDING

.APPROVED AS TO
FORM AND SUBSTANCE:
HULL & ASSOCIATES, P.C.
Attorneys for Plaintiff/Counter-Defendant

...

PLAINTIFF/COUNTER-DEFENDANT'S ADDRESS:
LHR, INC.
c/o Hull & Associates, P.C.
6200 Savoy, Suite 440
Houston, TX 77036

I certify that Defendant/Counter-Plaintiff's last known address is:

ELIJAH W. RATCLIFF
PO BOX 391
LIVINGSTON TX 77351

....
***

NO. CIV 22,975
IN THE DISTRICT COURT OF
POLK COUNTY, TEXAS
258TH JUDICIAL DISTRICT
COPY

ORDER

LHR, INC.
vs.
ELIJAH W. RATCLIFF

NO. CIV22975
§

IN THE DISTRICT COURT
258TH JUDICIAL DISTRICT
POLK COUNTY, TEXAS

ORDER DENYING
DEFENDANT'S
MOTION TO COMPEL

Came on before the court on this day, and the court having considered Defendant's Motion to Compel, and having considered the matter, hereby DENIES Defendant's Motion to Compel.

...

APPENDIX C

LHR, INC.
vs.
ELIJAH W. RATCLIFF
NO. CIV22975
§
IN THE DISTRICT COURT
258TH JUDICIAL
POLK COUNTY, TEXAS

PLAINTIFF'S ANSWERS TO DEFENDANT'S INTERROGATORIES
TO: ELIJAH W. RATCLIFF, Defendant herein, PO BOX 391, LIVINGSTON TX 77351

Pursuant to Rule 197, Texas Rules of Civil Procedure, LHR, INC., files and serves these its Answers to Defendant's Interrogatories.

Respectfully submitted,
HULL & ASSOCIATES, P.C.
Attorneys for Plaintiff

...

ANSWERS TO DEFENDANT'S INTERROGATORIES
Interrogatory No. I
ANSWER: Yes.
Interrogatory No. II
ANSWER: A.
Unknown to Plaintiff.

B. The original creditor of the bank.
C. The seller of the vehicle.
D. The Defendant.
E. Unknown to Plaintiff.
F. Unknown to Plaintiff.
G. LHR is the Plaintiff.

Interrogatory No. III
ANSWER: The only relationship is with Bank One, which assigned the debt to the Plaintiff, LHR.

.....

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon Defendant(s) via: Certified U. S. mail, Return Receipt Requested
To

ELIJAH W RATCLIFF
PO BOX 391
LIVINGSTON TX 77351

RESPONSES TO REQUEST FOR DISCLOSURE

(a) the correct name of the parties to the lawsuit;

RESPONSE: LHR, Inc. - Plaintiff
Elijah W. Ratcliff - Defendant

(b) the name, address and telephone number of any potential parties;

RESPONSE: None known.

© the legal theories and, in general, the factual bases of the responding party's claims or defenses (the responding party need not marshal all evidence that may be offered at trial);

RESPONSE: This is a suit on a credit card account. The defendant was provided credit, failed to make the required payments, and after all payments, credits, and offsets are applied, a balance remains due and owing.

...

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon Defendant(s) via:

...

ELIJAH W RATCLIFF
PO BOX 391
LIVINGSTON TX 77351

NO. CIV 22,975
IN THE DISTRICT COURT OF
POLK COUNTY, TEXAS
258TH JUDICIAL DISTRICT

REQUEST FOR PREPARATION OF RECORD

TO THE CLERK OF THE DISTRICT COURT OF POLK COUNTY, TEXAS AND THE COURT REPORTER AND THE COURT RECORDER FOR THE 258TH JUDICIAL DISTRICT OF TEXAS:

Cross Plaintiff, Elijah W. Ratcliff, requests preparation of the Appellate Record to facilitate the review sought in the above entitled and numbered cause including the following items, to wit:

1. Plaintiff's Original Petition, Request for Disclosures and Request for Admissions as served and filed with the District Clerk on July 17,2006;

2. The Citation for personal service as served on Defendant-Cross Plaintiff;

3. The Petition for Removal as served and filed herein, and in the United States District Court, on August 4, 2006;

4. The Motion for Leave to File and Defendant-Cross Plaintiff's Original Petition for Relief from Credit Discrimination and Civil Rights Abuses as served and filed herein, and in the United States District Court, on August 16, 2006;

5. The Affidavit on Return of Service as served on Plaintiff-Cross Defendant under date of August 19, 2006, with attachment, filed with the District Clerk;
Page 1 of 3

6. Defendant-Cross Plaintiff's Disclosures and Responses to Request for Admissions as served and filed with the District Clerk on August 24, 2006;

7. Cross Plaintiff's Affidavit for Judgment by Default as filed with the District Clerk on September 11, 2006;

8. The Notice of Setting and Cross Plaintiff's Motion for Summary Judgment as served and filed with the District Clerk on September 28, 2006;

9. Cross Plaintiffs Setting Request and Motion for Discovery Order with attachments:
(A) Rule 194 Request for Disclosures; and
(B) Rule 197 Interrogatories to Cross Defendant;
as served and filed with the District Clerk;

10. The Reporter's and Recorder's Record for all filings set in the immediate proceeding;

11. The Clerk's Record and the Reporter's Record as well as the Recorder's Record for all proceedings under docket No. 18,176 and No. 18,177, in the District of Polk County, Texas;

12. The Notice of Appeal as served and filed herein on February 8, 2007; and

13. The immediate Request for Preparation of Record as served and filed herein.

Respectfully, executed this 22nd day of February, 2007.
s// Elijah W. Ratcliff
Elijah W. Ratcliff,

Consultant
P. O. Box';S62!),
Livingston, Texas 77351
Ph. 936 327-7108
Page 2 of 3
AFFIDAVIT OF SERVICE

The undersigned Affiant certifies under penalties of perjury as if executed before a proper notary public that a copy of the foregoing Notice of Appeal was served by in-hand-delivery on:
Ms. Kathy Clifton
District Clerk
Polk County Courthouse
Livingston, Texas 77351;
and by first class United State Mail on the opposing Counsel and the indicated Officials herein addressed to:
Ms. Graciela I. Caka,
Court Reporter
258th Judicial District
P. O. Box 1115
Groveton, Texas 75845;
and
Hon. James N. Hull
Attorney at Law
6200 Savoy, Suite 440
Houston, Texas 77036,
this 22nd day of February, 2007.
s// Elijah W. Ratcliff
AFFIANT
Page 3 of 3
***
NO. CIV 22,975
ELIJAH W . RATCLIFF,
DEFENDANT-CROSS PLAINTIFF

VS
LHR, INC.,
PLAINTIFF-CROSS DEFENDANT

IN THE DISTRICT COURT OF
POLK COUNTY, TEXAS
258TH JUDICIAL DISTRICT

FIRST SUPPLEMENTAL MOTION FOR DISCOVERY ORDER

TO THE SAID HONORABLE COURT AND COUNSEL OF RECORD FOR CROSS DEFENDANT HEREIN:

Cross-Plaintiff, Elijah W. Ratcliff, moves the Court for an Order granting sanctions, or, alternaively, compelling Cross Defendant to give proper responses to Cross-Plaintiff's Rule 194; Request for Disclosures; and Rule 197 Interrogatories to Party as duly served pursuant to Rule 194 and Rule 197 of the Texas Rules of Civil Procedure on Cross Defendant on the 9th day of December, reiterated on 12th day of June, 2007 as reflected by the copies thereof attached hereto as Exhibit A and Exhibit B, which party was required to serve written responses thereto on Cross Plaintiff within thirty (30) days after service of the respective discovery, to wit:

I. Vernon's Ann. Rules Civ. Proc., rule 194.3, provides: "The responding party must serve a written response on the requesting party within 30 clays after service of the request, except that:

(a) a defendant served with a request before the defendant's answer is due need not respond until 50 days after service of the request, and

(b) a response to a request under Rule 194.2(f) is governed by Rule 195.1."

II. Vernon's Ann. Rules Civ. Proc., rule 194.4 ,provides: ...

Page 1 of 5

...

AFFIDAVIT OF SERVICE

The undersigned .Affiant certifies under penalties of perjury as if executed before a proper notary public that a copy of the foregoing DEFENDANT-CROSS PLAINTIFF'S RULE 194 REQUEST FOR DISCLOSURES was served by first Class United States Mail addressed to:

Hon. James N. Hull
Attorney at Law
6200 Savoy, Suite 440
Houston. Texas 77036.

this 9th day of December, 2006.
s// Elijah W. Ratcliff
AFFIANT
Page 4 of 4
ELIJAH W. RATCLIFF,
DEFENDANT-CROSS PLAINTIFF
VS
LHR, INC.,
PLAINTIFF-CROSS DEFENDANT
NO. CIV 22,975
IN THE DISTRICT COURT OF
POLK COUNTY, TEXAS
258TH JUDICIAL DISTRICT
...
EXHIBIT B TO FIRST SUPPLEMENTAL MOTION FOR DISCOVERY ORDER:

CROSS PLAINTIFF'S INTERROGATORIES TO PARTY

...

V. Cross Plaintiff insists on verification of each response to the subject item as required by Rule 197.2(d).

VI. Cross Plaintiff insists on verification of your response to the subject item as required by Rules 194.4 and 197.2(d).

VII. Cross Plaintiff insists on verification and documentation of your response to the subject item as required by Rules 194.4 and 197 .2(d).

VIII. Cross Plaintiff insists on verification and documentation of your response to the subject item as required by Rules 194.4 and 197.2(d).

IX. Cross Plaintiff insists on verification and documentation of your response to the subject item as required by Rules 194.4 and 197.2(d).

X. Cross Plaintiff insists on verification and documentation of your response to the subject item as required by Rule 197.2(d).

Respectfully submitted this 12th day of June, 2007.

s//Elijah W. Ratcliff
Elijah W. Ratcliff,

...

NO. CIV 22,975
ELIJAH W. RATCLIFF,
DEFENDANT-CROSS PLAINTIFF
VS
LHR, INC.,
PLAINTIFF-CROSS DEFENDANT
ORDER
IN THE DISTRICT COURT OF

POLK COUNTY, TEXAS
258TH JUDICIAL DISTRICT
TO THE SAID HONORABLE COURT AND
COUNSEL OF RECORD FOR CROSS
DEFENDANT HEREIN:

Came to be considered this __ day of July, 2007, the First Supplemental Motion for Discovery Order filed by Cross-Plaintiff, Elijah W. Ratcliff, who moved the Court for an Order of sanctions in lieu of compelling Defendants to give proper responses to Cross- Plaintiff's Rule 194 Request for Disclosures and Rule 197 Interrogatories to Party as duly served pursuant to Rule 194 and Rule 197 of the Texas Rules of Civil Procedure on Cross Defendant on the 9th day of December, 2006, and it appearing from the motion with its attachments and the record in its entirety in the proceeding that Plaintiff-Cross Defendant LHR, Inc., has failed to timely serve any written responses to Cross Plaintiff's Request for Disclosures and further such Cross Defendant has failed to timely serve verified written responses to Cross Plaintiff's Interrogatories through the present date, to wit:

I. Cross Defendant was served the Request for Disclosure as exhibited herein, but it has failed to respond to such request for Disclosures; and

II. Cross Defendant was served the Interrogatories to Party as exhibited herein, and it has declined to serve verified responses as required by Rule 197.2(d);

III. The record reflects further that Cross Defendant failed to timely file and serve a traversing response to Cross Plaintiff's Motion for Summary Judgment which was heard by the Court

on the 2nd day of November, 2006, with respect to which the Court excused Cross Defendant, permitting the filing of a response and a denial of the summary judgment for Cross Plaintiff even though the response did not traverse the affidavit presented by Cross Plaintiff.

The Court finds that the aforementioned conduct on the part of Cross Defendant is unsatisfactorily dilatory and obstructive meriting sanctions for such Cross Defendant's disregard for the prescribed legal process.

It is, therefore, ORDERED that the previously permitted response of Cross Defendant LHR, Inc., to the Motion for Summary Judgment be STRICKEN, and that Judgment for Cross Plaintiff be entered as proposed by the Motion for Summary Judgment served and filed herein on the 28th day of September, 2006.

SUBSCRIBED this __ day of July, 2007.

DISTRICT JUDGE
258TH JUDICIAL DISTRICT
POLK COUNTY, TEXAS

NOTICE OF REQUEST TO ENTER ORDER ON MOTION FOR DISCOVERY ORDER
TO THE SAID HONORABLE COURT AND COUNSEL OF RECORD FOR CROSS DEFENDANT HEREIN:

PLEASE TAKE NOTICE that on the 2nd day of October, 2007, with or without the availability of oral argument, Defendant-Cross Plaintiff will request the Court to enter the Order proposed at the setting of his Motion for Discovery Order on the 3rd day of July, 2007, at which time a representative of Plaintiff-Cross Defendant did not appear, to wit:
MOTION FOR DISCOVERY ORDER

Cross-Plaintiff, Elijah W. Ratcliff, moves the Court for an Order granting sanctions in lieu of compelling Defendants to give proper responses to Cross-Plaintiff's Rule 194 Request for Disclosures and Rule 197 Interrogatories to Party as duly served pursuant to Rule 191 and Rule 197 of the Texas Rules of Civil Procedure on Cross Defendant on the 9th day of December, reiterated on 12th day of June, 2007 as exhibited by the copy thereof attached hereto, which party was required to serve written responses thereto on Cross Plaintiff within thirty (30) days after service of the respective discovery, to wit:

I. Vernon's Ann. Rules Civ. Proc., rule 194.3 , provides:

"The responding party must serve a written response on the

requesting party within 30 clays after service of the request, except that:

(a) a defendant served with a request before the defendant's answer is due need not respond until 50 days after service of the request, and

(b) a response to a request under Rule 194.2(f) is governed by Rule 195.1."

II. Vernon's Ann. Rules Civ. Proc., rule 194.4 ,provides:

"Copies of documents and other tangible items ordinarily must be served with the response. But if the responsive documents are voluminous, the response must state a reasonable time and place for the production of documents. The responding party must produce the documents at the time and place stated, unless otherwise agreed by the parties or ordered by the court, and must provide the requesting party a reasonable opportunity to inspect them."

III. Cross Defendant was served the Request for Disclosure as attached to Cross Plaintiff s initial discovery motion filed herein comprising Exhibit A thereto, and such party has refused to file a response to the Request for Disclosure to the present time contrary to Vernon's Ann. Rules Civ. Proc., rules 194.3 and 193.4, meriting sanctions as sought hereby.

IV. Vernon's Ann. Rules Civ. Proc., rule 197.1, provides:

"A party may serve on another party--no later than 30 days before the end of the discovery period–written interrogatories to inquire about any matter within the scope of discovery except matters covered by Rule 195. An interrogatory may inquire whether a party makes a specific legal or factual contention and may ask the responding party to state the legal theories and to describe in general the factual bases

for the party's claims or defenses, but interrogatories may not be used to require the responding party to marshal all of the available proof or the proof the party intends to offer at trial."

Page 2 of 6

V. Vernon's Ann. Rules Civ. Proc., rule 197.2, provides:

"(a) Time for Response. The responding party must serve a written response on the requesting party within 30 days after service of the interrogatories, except that a defendant served with interrogatories before the defendant's answer is due need not respond until 50 days after service of the interrogatories.

(b) Content of Response. A response must include the party's answers to the interrogatories and may include objections and assertions of privilege as required under these rules.

© Option to Produce Records. If the answer to an interrogatory may be derived or ascertained from public records, from the responding party's business records, or from a compilation, abstract or summary of the responding party's business records, and the burden of deriving or ascertaining the answer is substantially the same for the requesting party as for the responding party, the responding party may answer the interrogatory by specifying and, if applicable, producing the records or compilation, abstract or summary of the records. The records from which the answer may be derived or ascertained must be specified in sufficient detail to permit the requesting party to locate and identify them as readily as can the responding party. If the responding party has specified business records, the responding party must state a reasonable time and

place for examination of the documents. The responding parry must produce the documents at the time and place stated, unless otherwise agreed by the parties or ordered by the court, and must provide the requesting party a reasonable opportunity to inspect them.

(d) Verification Required; Exceptions. A responding party--not an agent or attorney as otherwise permitted by Rule 14--must sign the answers under oath except that:

(1) when answers are based on information obtained from other persons, the party may so state, and

(2) a party need not sign answers to interrogatories about persons with knowledge of relevant facts, trial witnesses, and legal contentions."

V. Cross Defendant was served the Interrogatories to Party as filed herein and attached to his initial Motion for Discovery Order comprising Exhibit B thereto, and such party has refused to file any verified answers to such discovery to the present time contrary to Vernon's Ann. Rules Civ. Proc., rules 197.1 and 197.2, meriting sanctions as sought hereby.

III. Cross Defendant has been contacted via fax requesting an indication of his intentions regarding compliance with the described discovery endeavor, but no reply or response has been obtained by Movant, and with respect to each discovery item, Cross Defendant is in default under the applicable rules of court, to wit:

Sanctions consistent with and pursuant to Vernon's Ann. Tex. Rules Civ. Proc., rules 166(a), (c),

(d), (e), (1), (h) and (I); 191.1(a) and (d); 193.1; 194.1; 194.2(a), (b), ©, (d), (e), (f), (g), (h), (I) and (l); 194.3; 197.1; 197.2(a); and 215.1(a), (b)(3)(A), (B) and (D), in lieu of an Order compelling full and complete answers and responses to the Request for Disclosures and Interrogatories to Party is proper as required by the cited Rules of Court, arising out of Cross-Defendant's disregard for the legal process as prescribed.

Premises considered, Cross Plaintiff requests the Court to enter an Order granting sanctions against Cross Defendant in lieu of compelling full and complete answers and responses to the Request for Disclosures and Interrogatories to Party duly served on Cross Defendant LHR, Inc., as required by the Rules of Court, as merited sanctions for the unjustifiable disregard for the well precedented legal process by Cross Defendant and its Counsel of Record.

Respectfully submitted this 11 th day of September, 2007.

s// Elijah W. Ratcliff
CROSS PLAINTIFF
Page 4 of 6
***
...
Page 5 of 6
...

AFFIDAVIT OF SERVICE

The undersigned Affiant certifies under penalties of perjury as if executed before a proper notary public that a copy of the foregoing NOTICE OF REQUEST TO ENTER ORDER ON :MOTION FOR DISCOVERY ORDER was served by first class United States Mail addressed to:

HULL AND ASSOCIATES
Attn: Attorney Brian Staley

6200 Savoy, Suite 440
Houston, Texas 77036,

this 1 l" day of September, 2007.
s// Elijah W. Ratcliff
AFFIANT
Page 6 of 6

NO. CIV. 22,975
ELIJAH W. RATCLIFF,
DEFENDANT-CROSS PLAINTIFF
VS
LHR, INC.,
PLAINTIFF -CROSS DEFENDANT

IN THE DISTRICT COURT OF
POLK COUNTY, TEXAS
258TH JUDICIAL DISTRICT

OBJECTIONS TO PLAINTIFF'S FIRST AMENDED MOTION FOR SUMMARY JUDGMENT AND NO- EVIDENCE MOTION FOR SUMMARY JUDGMENT ON DEFENDANT'S COUNTERCLAIM

Cross Plaintiff objects to Cross Defendant's amended motion for summary judgment as executed on September 7, 2007, and set for hearing on October 2,2007, for the reasons presented applicable to such party's previous motion for summary judgment emphasizing that the delay in discovery is ultimately attributable to Cross Defendant, and such party has presented no credible summary judgment evidence contravening evidence properly presently by Cross Plaintiff.

Cross Plaintiff attaches hereto an Affidavit further establishing his objections to Cross Defendant's motion.

Subscribed this 11th day of September, 2007.

s// Elijah W. Ratcliff

ELIJAH W. RATCLIFF,

...

ELIJAH W. RATCLIFF,
DEFENDANT-CROSS PLAINTIFF
VS
LHR, INC.,
PLAINTIFF -CROSS DEFENDANT
NO. CIV. 22,975

IN THE DISTRICT COURT OF
POLK COUNTY, TEXAS
258TII JUDICIAL DISTRICT

AFFIDAVIT IN SUPPORT OF OBJECTIONS TO SUMMARY .JUDGMENT FOR CROSS DEFENDANT LHR, INC.

BEFORE ME, the undersigned authority, on this day personally appeared Elijah W. Ratcliff who, after being duly sworn and deposed, did state that he is duly qualified under the applicable rules of evidence and procedure to give testimony of the facts hereinafter set forth as acquired during the normal course of Affiant's duties as an executive and consultant with offices at 1000 W. West Street, Livingston, Texas 77351, and that Affiant has personal knowledge of the correctness of the statements made herein.

1. Relator's name is Elijah W. Ratcliff; he is registered as a voting resident of the State of New York, from 250 W. 43rd Street in New York City 10036, who has been in the State of Texas continuously over a five year period or more. Relator is a business consultant which applicable address via Dunbar Resources-Livingston, Inc., is 1000 W. West Street, P. O. Box 862, Livingston, Texas 77351, Ph. 936 327-7108.

2. A review of Plaintiff-Cross Defendant's name on the internet reveals that it has a history of aggregating personal information for calculated financial exploitation ..., but the Driver License Number of Cross Plaintiff is 01321770 and the last four

digits of his Social Security Number are "6124."

3. The correct legal name for Cross Plaintiff is Elijah W. Ratcliff, but Cross Defendant is the best source to disclose which entity it intended to bring suit against.

4. As indicated in the response to Cross Defendant's Request for Disclosures, it is difficult to know the full scope of persons with knowledge about the suit until the privy of such party to other parties is defined as requested by Cross Plaintiff's interrogatories to Cross Defendant, but it appears clear that the Officers and personnel of Southern Chrysler Plymouth Dodge, Jeep, Eagle of Lufkin, Texas and the personnel of Bank One at Chicago, Illinois during the calendar years 2001 to the present could provide pertinent details, or information which could reasonably lead to pertinent evidence, regarding facts of the case.

5. Also, as indicated in the response to Cross Defendant's Request for Disclosures, it is difficult to know the full scope of persons who may be necessary parties to this proceeding until the privy of such Cross Defendant to other parties is disclosed, as requested by Cross Plaintiff's interrogatories to Cross Defendant, but it appears clear Southern Chrysler Plymouth Dodge, Jeep, Eagle of Lufkin, Texas, along with certain of its personnel, in addition to Bank One at Chicago, Illinois, and its successors or assigns, following the calendar year 2001 to the present, could be necessary and proper parties.

6. Cross Plaintiff is awaiting plenary answers to his Interrogatories to Cross Defendant to complete his list with the name, address, and qualifications of every expert whom Cross Plaintiff expects to testify on his behalf, and any consulting expert whose opinions, mental impressions, or work product was reviewed by a testifying expert, and, for each person named, providing the area in which we expect them to testify or render an opinion, the subject matter of the expert's Page

2 of 9

testimony, the expert's mental impressions and opinions, and the facts known by the expert that relate to or form the basis of those mental impressions and opinions. However, John H. Ratcliff of Ypsilanti, Michigan has, already, made a court appearance related to the matter, and his expertise is likely to be recalled in addition to that of Elijah W. Ratcliff. Personnel of the dealership and the Bank are likely to be subpoenaed as witnesses to produce certain records, but not necessarily as experts. Also, Cross Plaintiff further informs Cross Defendant that each witness subpoenaed by either party or listed in

the file of the Prosecution in No. 18,176 and No. 18,177 on the Criminal Docket of the District Court of Polk County, Texas may reasonably have pertinence as a witness or a party.

...

12. Cross Plaintiff was unaware of Cross Defendant prior to its retention of Counsel who initiated the immediate proceeding. Thus, Cross Defendant is the best source to reveal which entity it intended to bring suit against, and reveal information prerequisite to a proper analysis of whether it failed to perform any contractual obligations under a retail installment contract, if any relationship or status is applicable.

...

15. It is difficult to know all remedies available to Cross Plaintiff or the full scope of persons who may be necessary parties to this proceeding until the privy of such Cross Defendant to other parties is disclosed, as requested by Cross Plaintiff's interrogatories to Cross Defendant, but it appears clear Southern Chrysler Plymouth Dodge, Jeep, Eagle of Lufkin, Texas, along with certain personnel, in addition to Bank One at Chicago, Illinois, and its successors or assigns, following the calendar year 2001 to the present, could be necessary and proper witnesses or parties, or both, and that the defense may be asserted that they have not performed certain acts, or a condition precedent has not occurred, necessary for Plaintiff to recover under a contract in this

Page 5 of 9

lawsuit as such Cross Defendant has not been responsive to or addressed Cross Plaintiff s inquiries of such Cross Defendant's familiarity with the facts

and equities giving rise to any contractual relationship or consumer status.

16. Cross Plaintiff has incurred false arrest and detention arising out of the transaction involving Southern Chrysler Plymouth Dodge, Jeep, Eagle of Lufkin, Texas, along with certain personnel, in addition to Bank One at Chicago, Illinois, and its successors or assigns, following the calendar year 2001 to the present, and the pertinent disposition appears to be extended by the delays currently engaged by Cross Defendant.

17. ...the nature of Cross Defendant's inquiries suggest that it may have a right to indemnity against other parties, but he has not communicated any liability owing from Defendant-Cross Plaintiff.

...

Subscribed this 11 th day of September, 2007.
s// Elijah W. Ratcliff
AFFIANT'
ELIJAH W. RATCLIFF,
...Page 7 of 9

STATE OF TEXAS
COUNTY OF POLK
§
AFFIDAVIT

BEFORE ME, the undersigned authority, on this day personally appeared Elijah W. Ratcliff who, after being duly sworn and deposed, did state that the foregoing responses are true and correct, and complete, and that Affiant's has personal knowledge of the correctness of each response.

SUBSCRIBED AND SWORN TO before me this the 11 th day of August, 2007.
NOTARY PUBLIC IN AND FOR"
THE STATE OF TEXAS

NOTARY PUBLIC
STATE OF TEXAS
My commission expires: 03 07 2009
Page 8 of 9
AFFIDAVIT OF SERVICE

The undersigned Affiant certifies under penalties of perjury as if executed before a proper notary public that a copy of the foregoing AFFIDAVIT IN SUPPORT OF OBJECTIONS TO SUMMARY JUDGMENT FOR CROSS DEFENDANT LHR, INC., was served by first class United States Mail herein addressed to:
HULL & ASSOCIATES, P.C.
Attn: Attorney Brian Staley
6200 Savoy, Suite 440
Houston, Texas 77036
Fax Ph. 713 952-8375
this 11 th day of September, 2007.
AFFIANT
Page 9 of 9
AFFIDAVIT OF SERVICE

The undersigned Affiant's certifies under penalties of perjury as if executed before a proper notary public that a copy of the foregoing OBJECTIONS TO PLAINTIFF'S FIRST AMENDED MOTION FOR SUMMARY JUDGMENT AND NO-EVIDENCE MOTION FOR SUMMARY JUDGMENT ON DEFENDANT'S COUNTERCLAIM was served by first class United States Mail herein addressed to:

HULL & ASSOCIATES, P.C.
Attn: Attorney Brian Staley
6200 Savoy, Suite 440
Houston, Texas 77036
Fax Ph. 713 952-8375
this 11 th day of September, 2007.
s// Elijah W. Ratcliff
AFFIANT
Page 2 of 2

APPENDIX D

UNITED STATES CODE, CONST. AMEND. XIV:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State,

being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce. by appropriate legislation, the provisions of this article.

V.T.C.A. CIVIL PRACTICES AND REMEDIES CODE

§ 16.002. One-Year Limitations Period

(a) A person must bring suit for malicious prosecution, libel, slander, or breach of promise of marriage not later than one year after the day the cause of action accrues.

§ 16.002

(b) A person must bring suit to set aside a sale of property seized under Subchapter E, Chapter 33, Tax Code,' not later than one year after the date the property is sold.

...

§ 10.004. Four-Year Limitations Period

(a) A person must bring suit on the following actions not later than four years after the day the cause of action accrues:

(1) specific performance of a contract for the conveyance of real property;
(2) penalty or damages on the penal clause of a bond to convey real property;
(3) debt;
(4) fraud; or
(5) breach of fiduciary duty.

(b) A person must bring suit on the bond of an executor, administrator, or guardian not later than

four years after the day of the death, resignation, removal, or discharge of the executor, administrator, or guardian.

(c) A person must bring suit against his partner for a settlement of partnership accounts, and must bring an action on an open or stated account, or on a mutual and current account concerning the trade of merchandise between merchants or their agents or factors, not later than four years after the day that the cause of action accrues. For purposes of this subsection, the cause of action accrues on the day that the dealings in which the parties were interested together cease.